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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,184

12/31/2003

Richard L. Franklin

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4994

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7590

11/26/2008

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EXAMINER

LUCAS, ZACHARIAH

ART UNIT

PAPER NUMBER

1648

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/750,184	Applicant(s) FRANKLIN, RICHARD L.	
	Examiner Zachariah Lucas	Art Unit 1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 17 July 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 142-153 and 157-164.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Zachariah Lucas/
Primary Examiner, Art Unit 1648

Continuation of 11. does NOT place the application in condition for allowance because: The arguments with respect to the rejections (102 and 103) over the Lindblom reference are not found persuasive. These arguments are on the grounds that the present application is entitled to priority to the earlier applications on the basis that the inventorship in the declaration of December 2003 is correct and shares named inventors with the prior applications. The argument is not found persuasive. The determination as to whether a submitted Oath or Declaration is proper must be made based on the record at the time it was submitted. In the present application, the Oath/Declaration was not considered proper at that time because the application was indicated by the Applicant to be a continuation-in-part of the parent applications, and in such cases a copy of the parent oath/declaration, such as the one submitted in December 2003, is not acceptable under 37 CFR 1.78. As this declaration was not accepted by the Office, and was not a proper oath/declaration at the time it was submitted, the declaration submitted in October 2004 is considered to be controlling in the present application. According to this declaration, the present application does not share inventorship with the applications to which priority is claimed, and thus priority is not granted. The rejections based on the Lindblom reference are therefore maintained.

With respect to the rejection over Ratcliff in view of Hellgren and Karlstam, the Applicant provides two arguments in traversal. First, the Applicant argues that the glucosaminoglycans (GAGs) of Ratcliff are sulphated, while Karlstam does not mention sulphated materials. The argument is not found persuasive. Karlstam indicates that the krill enzymes would be effective against glycoaminoglycans generally, including embodiments wherein the GAGs contain sulphates. See, page 2, lines 18-22. From these teachings, it would have been obvious to those of ordinary skill in the art to have applied the krill enzymes to the claimed used as previously described.

The second argument with respect to this obviousness rejection is that the plaque described in Ratcliff is a complex matrix of several materials, and that the enzyme of Karlstam targets only one member of the complex. The argument is not found persuasive. First, the argument does not account for the teachings of Hellgren, which indicates that krill enzymes include enzymes targeting several members of the complex. Secondly, even in the absence of such teachings, from the teachings of Karlstam and Ratcliff it would have been obvious to those of ordinary skill in the art to have used the enzyme described by Karlstam to target at least one member of the complex in Ratcliff, and to apply that enzyme wither alone, or in combination with enzymes that target other members of the complex. The rejection is therefore maintained.

Applicant's arguments with respect to objections to the priority claim and the reference to the inventorship of the application in the specification of the present application are noted. However, the arguments are not found persuasive for the reasons indicated above in response to the arguments in traversal of the rejection over Lindblom. The objections are therefore maintained.

Applicant's arguments with respect to the amendment of July 2004 are not found persuasive. According to 37 CFR 1.121, amendments to the specification must clearly indicate where changes are being made. According to the submitted specification, page 1 of the application does not contain a paragraph to be deleted. Thus, while it may be reasoned out what the Applicant intended, the statements in the amendment itself does not clearly indicate what changes are to be made as required by the patent rules.

The objection to the specification on the basis of the provision of appropriate sequence identification numbers is maintained in part. In particular, no sequence identifiers have been provided for the modified amino acid sequences of at least 4 amino acids in length on lines 29 and 30 of page 45.

The amendments to the application have overcome the objection to the specification in reference to the handwritten amendments identified in paragraph 6 of the action mailed on January 17, 2008.

Applicant's arguments have overcome the advisory regarding the potential double patenting objections of pages 9-10 of the action mailed on January 17, 2008.

The amendments to the claims are not considered to, and are not suggested by the Applicant, to change the scope of the claims, or to affect the rejections of record.